IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WA.No. 416 of 2007(B)

AGAINST THE JUDGEMENT IN WPC.865/2006 Dated 19/01/2007

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APPELLANT/PETITIONER:

G.SREEKUMAR, ADVOCATE,
THILAKKAM, THEVALLY P.O.,
KOLLAM-9.

BY ADV. SRI.V.GIRI

RESPONDENT/RESPONDENT:

STATE OF KERALA, REPRESENTED BY
ITS SECRETARY TO GOVERNMENT, LABOUR AND
REHABILITATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADVOCATE GENERAL SHRI C.P. SUDHAKARA PRASAD.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13/04/2007 ALONG WITH WA NO. 955 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & K.T. SANKARAN, JJ.

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W.A. Nos. 416 & 955 OF 2007

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Dated this the 13th April, 2007

J U D G M E N T

Kurian Joseph, J:

These appeals are at the instance of the writ petitioners . The issue pertains to the selection and appointment to the post of Industrial Tribunal. Anticipating two vacancies, the Government in 1999 took steps for preparing a select list. The vacancies were to arise on 29.02.2000 and 30.11.2000. Though the list was prepared in January, 2001, Government had not approved the select list. While so, the incumbents who are due to retire in 2000 seeking enhancement of retirement age initiated various litigations. While their case was pending before the Supreme Court, the Government in 2002 decided to enhance the retirement age to 60 and also to re-induct the two incumbents who had already retired in 2000. That was under challenge at the instance of the petitioners, leading to judgment in O.P. No. 20025 of 2002 (Ext.P6) and O.P. 24094 of 2001 (Ext.P7). Judgment is dated 27.09.2005. By that time, as already stated above, the

two incumbents who had already retired in 2000 were re-inducted, in 2002. They were also due to retire by 28.02.2005 and 30.11.2005 on attainment of the age of 60. In the meanwhile necessary amendments with retrospective effect had also been carried out in the Kerala Service Rules raising the age of retirement of the Industrial Tribunals as 60. Taking note of the fact that selection referred to in those Original Petitions started in the year 1999, the Government decided to prepare a fresh panel since it is:

> *".....unfair to fill up two posts of Industrial Tribunals at Kollam and Kozhikode now available from a rank list prepared during 01/2001 as so many persons have become eligible for applying to those two posts. Hence it would be better to take action to call for fresh applications to fill up the posts of Industrial Tribunals....."*

The extract is from the decision of the Government, as seen from the files made available at the time of hearing. Reference to said decision is made in the counter affidavit filed in W.P(C) 865 of 2006. It is based on that decision only, steps have been taken for preparation of a new panel as per the impugned proceedings. Shri V. Giri and Shri Raju K. Mathews, learned counsel appearing for the writ petitioners, the toppers in the

select list already prepared in January, 2001 submit that, having conducted a selection in respect of the vacancies which were to arise in 2000 and that too by a high power committee, it would be highly unfair and un-reasonable not to act upon the select list. It is also submitted that since those writ petitioners are continuing in the profession, it can only be presumed that they are better equipped to hold the posts in view of efflux of time of around six years after the selection. Still further it is submitted that the Government had always submitted that they were yet to take a decision regarding the selection and hence the decision to drop the selection already conducted is unjust. Learned counsel appearing for the appellants would further submit that the vacancies had in fact arisen in the year 2000 but no steps were taken to fill up those vacancies from the panel already prepared by the high power committee in January, 2001 and that without amending the rules it was absolutely unjust and illegal on the part of the Government to have re-inducted the persons already retired on superannuation at the age of 55 at the relevant time.

2. Shri Sudhakara Prasad, learned Advocate General submits that

the Government has taken a policy decision, taking into account the various aspects of the issue particularly the fact of efflux of time of about six years after the commencement of the selection in 1999. It is also submitted that the vacancies for which the selection was conducted had in fact arisen only in February 2005 and November, 2005 and the vacancies did not arise in the year 2000 as anticipated. It is further submitted that the vacancies having actually arisen only in 2005, it is only just, fair and proper that a fresh selection is conducted giving opportunity to the people, who have become qualified in the meanwhile as well. Reference is also placed on the decision of the Apex Court in **N. Mohanan vs. State of Kerala (JT 1997 (1) SC 475).**

3. Learned single Judge adverting to the various contentions, some of which are referred to above by us, has taken the view that the Government having taken a policy decision to include the candidates who have become qualified during the past more than six years it would not be proper for this court to interfere with such a decision. It is also held that there is nothing unfair or arbitrary in calling for a fresh panel in 2005

since vacancies for which selection was conducted did not arise as anticipated, in the year 2000. We are inclined to agree with the reasoning of the learned single Judge that denial of opportunity to the candidates who have become qualified during the interregnum of last 7 years would be highly unjust and unfair. No candidate in a select list possesses any indefeasible right to be appointed. For the only reason that a select list is prepared, the appointing authority is not bound to make the appointments from the list, particularly when the list was not approved by the Government as required under law. The authority is certainly free to take stock of the intervening development that the vacancies had not actually arisen as anticipated. In this context, it is also to be noted that the direction in Exts. P6 and P7 judgments dated 27.09.2005 was only ".....*to take a final decision regarding the selection.....*".

4. Learned Advocate General however assures the court that a fair and proper selection will be conducted and that it will be open to the petitioners also to participate in the selection process commenced pursuant to the impugned communication . It is also submitted that all the

persons who have been included in the select list prepared pursuant to the selection conducted in January, 2001 will be permitted to participate in the selection. It is made clear that in view of the submission as above, the appellants will also be included in the selection process treating them as duly included in the panel for the present selection.

Subject to the clarifications as above, Writ Appeals are dismissed.

KURIAN JOSEPH,
JUDGE.

K.T. SANKARAN,
JUDGE.

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